

NOT FINAL UNTIL TIME EXPIRES  
TO FILE REHEARING MOTION  
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
THIRD DISTRICT  
JULY TERM, A.D. 2001

LAUDI DIAZ,

\*\*

Appellant,

\*\*

vs.

\*\*

CASE NO. 3D00-2719

THE STATE OF FLORIDA,

\*\*

LOWER

Appellee.

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TRIBUNAL NO. 94-38682

Opinion filed July 18, 2001.

An appeal under Fla. R. App. P. 9.141(b)(2) from the Circuit  
Court for Dade County, Roberto M. Pineiro, Judge.

Marisa Tinkler Mendez, for appellant.

Robert A. Butterworth, Attorney General, and Barbara A. Zappi,  
Assistant Attorney General, for appellee.

Before JORGENSEN, COPE and RAMIREZ, JJ.

PER CURIAM.

Laudi Diaz appeals an order denying his motion for  
postconviction relief under Florida Rule of Criminal Procedure

3.850.\* We affirm in part and reverse in part.

In the sworn motion for rehearing submitted in the trial court, defendant-appellant Diaz stated that during a recess in the first day of trial, three jurors discussed the case with the bailiff, indicating that they intended to put the defendant in prison and the bailiff encouraged them to do so. Defendant's sworn motion states that his attorney knew about this but did nothing about it and was therefore ineffective. As the record does not conclusively refute this claim, see Fla. R. App. P. 9.141(b)(2)(D) (2001), we remand for an evidentiary hearing on this issue.

We affirm the denial of postconviction relief on the remaining points.

Affirmed in part, reversed in part and remanded for further proceedings consistent herewith.

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\* This is an appeal after remand in Diaz v. State, 762 So. 2d 599 (Fla. 3d DCA 2000).